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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Rural Task Force Recommendation	)	
	)	
TO: The Commission	)	

COMMENTS OF THE WESTERN ALLIANCE

THE WESTERN ALLIANCE

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Dated: February 26, 2001

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SUMMARY

The Western Alliance supports the adoption of the Rural Task Force Recommendation To The Joint Board On Universal Service in its entirety, and its implementation on July 1, 2001.

The Western Alliance supports the Rural Task Force ("RTF") Recommendation as a compromise package that has been developed and supported as a consensus proposal by the representatives of a diverse group of government, carrier and consumer entities. If adopted in its entirety without significant changes, the package will promote universal service, competition and consumer welfare.

However, the Westren Alliance would not support each and every element of the RTF Recommendation if the proposals had been advanced separately rather than as parts of a compromise package. First, the Western Alliance believes that the rural exchanges acquired in the future by rural carriers should be treated the very same as their pre-existing exchanges, and should not be subjected to any caps or limitations on federal universal service support. Rural telephone companies have an impressive record of improving rural service by acquiring and upgrading the long-neglected rural exchanges of larger carriers, and have not engaged in subsequent resale of such exchanges for profit. Whereas the RTF proposal will provide some support for upgrades of newly acquired rural exchanges (and is consequently a major improvement over current Rule 54.305), it remains far less than what is needed to encourage infrastructure investment and service upgrades therein.

Second, the Western Alliance opposes any freezing of the per-line support of rural carriers upon the entry of a competitor. Such a freeze does not appear to recognize the normal two-year lag between the incurrence of bona fide investment costs and operating expenses by rural carriers

and their receipt of universal service support reflecting those costs. It also disregards the facts that increased investment and universal service support may continue to be necessary to serve rural areas adequately after the entry of competition, and that competitors may elect not to serve the entire rural LEC study area or disaggregated sector for which per-line support has been frozen.

Third, the Western Alliance believes that any cap on high cost loop support renders such support insufficient and unpredictable in violation of Sections 254(b)(5) and 254(e) of the Communications Act. Whereas the adjusted base and revised index of the proposed RTF cap are a major improvement over the existing "interim" cap, they still fall short of the statutory requirements. The "above-the-cap safety additive support" mechanism proposed by the RTF would further reduce the inadequacies of a cap, and would not result in greater than 100 percent reimbursement of any rural carrier's incremental loop investment.

The Western Alliance will support the RTF proposals in the foregoing three areas, but only as parts of the overall compromise package and only if the entire RTF Recommendation is adopted without significant change.

Finally, the Western Alliance is concerned that the new January, 2002 proceeding advocated by the Joint Board may undermine the certainty and stability finally achieved for the next five years by the RTF compromise. It believes that the Commission should give the RTF proposals at least 24 to 30 months to work before initiating a proceeding that may once again render uncertain the nature and amount of future federal universal service support.

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COMMENTS OF THE WESTERN ALLIANCE

In response to the Commission's Further Notice Of Proposed Rulemaking, FCC 01-8, released January 12, 2001, in this proceeding, the Western Alliance urges that the Rural Task Force Recommendation To The Federal-State Joint Board On Universal Service be adopted in its entirety and implemented on July 1, 2001.

As noted by the Commission and the Federal-State Joint Board on Universal Service, the Recommendation is the consensus proposal of a broad range of interested parties, including rural telephone companies, competitive local exchange carriers, interexchange carriers, wireless providers, consumer advocates, and state and federal government agencies. The Recommendation recognizes the unique and diverse conditions in and among rural telephone company service areas, and proposes a reasonable and equitable plan for preserving and advancing universal service in those areas.

The Western Alliance would not support every proposal of the Recommendation if each had been made separately. However, it understands that the Recommendation is a compromise package of carefully integrated provisions that has won the unanimous approval of the representatives of a diverse group of government, carrier and consumer entities. Therefore, the

Western Alliance supports the compromise package **in its entirety**, and asks the Commission to adopt the resulting Recommendation without changes.

The Western Alliance

The Western Alliance is a consortium of the member companies of the Western Rural Telephone Association and the Rocky Mountain Telecommunications Association. It represents about 250 rural local exchange carriers (LECs) operating west of the Mississippi River.

Western Alliance members are generally small LECs serving sparsely populated, high cost rural areas. Most members serve less than 3,000 access lines overall, and less than 500 access lines per exchange. Their revenue streams differ greatly in size and composition from those of the price cap carriers. Most members generate revenues far smaller than the national telephone industry average, and rely upon interstate access and universal service dollars for 45-to-70 percent of their revenue bases.

At the same time, Western Alliance members incur per-customer facilities and operating costs far in excess of the national average. Not only does their small size preclude realization of significant economies of scale, but also they serve remote and rugged areas where the cost per loop is much higher than in urban and suburban America. Their primary service areas are comprised of sparsely populated farming and ranching regions, isolated mountain and desert communities, and Native American reservations. In many of these high cost areas, the Western Alliance member not only is the carrier of last resort, but also is the sole carrier that has ever shown a sustained commitment to making the investments necessary to furnish quality telecommunications services.

Western Alliance members are highly diverse. They did not develop along a common Bell System model, but rather employ a variety of network designs, equipment types and organizational structures. They construct, operate and maintain their facilities under a wide variety of climate and terrain conditions, ranging from the deserts of Arizona to the frozen tundra of Alaska, and from the valleys of Oregon to the plains of Kansas to the mountains of Wyoming.

Because of their significant reliance upon federal universal service support, Western Alliance members have a clear and substantial interest in this and other Commission proceedings that may result in changes in the nature and amount of such support.

The RTF Recommendation Will Promote Universal Service, Competition And Consumer Welfare

The RTF reasonably recognized and emphasized the Section 254(b) principles that Congress expressly adopted to define the purpose, nature and scope of universal service and related support mechanisms. The Recommendation is fully consistent with these principles as they apply to rural and insular areas. It proposes a specific, predictable and sufficient federal support mechanism to ensure that quality services will continue to be available in rural and insular areas at just, reasonable and affordable rates. 47 U.S.C. Sec. 254(b)(1) and (5). It is designed to enable consumers in all regions of the Nation, including low-income consumers and those in rural, insular and high-cost areas, to have access to telecommunications and information services (including interexchange services and advanced telecommunications and information services) that are reasonably comparable to the services provided in urban areas and that are available at rates reasonably comparable to rates charges for similar services in urban areas. 47 U.S.C. Sec. 254(b)(3). It continues the funding of the universal service support mechanism by equitable and nondiscriminatory contributions from all providers of interstate and international telecommunications services. 47 U.S.C. Sec. 254(b)(4).

The Recommendation will promote and advance universal service by reducing, during its proposed five-year term, the long period of uncertainty that has constrained the investment and service plans of rural carriers since the Commission first proposed to restructure the former Universal Service Fund in 1995 (CC Docket No. 80-286). The RTF support mechanism is economically and administratively workable for the Commission, the telecommunications industry, and particularly for the small carriers that serve significant portions of Rural America. It reasonably and prudently rejects the use of a "one size fits all" proxy model that would be either too simplistic to reflect the diversity among small rural carriers, or too complicated to administer efficiently. Rather than creating arbitrary "winners" and "losers" among small carriers, the RTF mechanism recognizes their diversity by using the embedded costs that reflect the actual expenses of serving their rural customers under the actual geographic, demographic, economic, weather and other conditions under which they must operate. The RTF mechanism will be administered, audited and controlled by an independent third party administrator (which is currently the National Exchange Carrier Association (NECA)). Finally, the RTF mechanism will continue to be subject to an indexed cap on aggregate high cost loop support, albeit a cap that will be re-based and indexed according to a more reasonable and equitable rural growth factor.

The Recommendation is competitively neutral, and will not hamper the entry of new carriers that desire to serve rural residents. Support will be available to all Eligible Telecommunications Carriers (ETCs) designated to serve rural telephone company study areas. Support will be targeted and disaggregated in a flexible manner that takes into consideration the widely varying geographic and cost characteristics of each rural service area, as well as the unique regulatory and competitive environments of each state.

The Recommendation will promote consumer welfare. By ending the six years of uncertainty regarding the nature and sufficiency of future universal service support, the RTF mechanism will provide rural carriers during its five-year term with a more stable planning environment within which to make investments in new and improved facilities, and to offer new and improved services to their rural customers. Equally important, by employing actual costs rather than a proxy model, the RTF mechanism will ensure that adequate universal service dollars will be available to support local service rates in most rural LEC study areas.

Rural LECs Should Receive Full Universal Service Support For Acquiring And Upgrading The Long-Neglected Rural Exchanges Of Larger Carriers

The Western Alliance supports the RTF Recommendation for the provision of additional universal service support to rural LECs that acquire and upgrade the infrastructure and service of rural exchanges. The Western Alliance believes that the RTF proposal should have gone further, and that any and all new exchanges acquired by a rural LEC should be treated exactly the same as its pre-existing exchanges for all purposes, including receipt of universal service support. This preferred approach would provide the greatest and most efficient incentive for new investment in rural telecommunications infrastructure and advanced services. However, in the spirit of maintaining the RTF consensus, the Western Alliance will support the RTF proposal for partial and capped support for acquired exchanges so long as the entire Recommendation is adopted without modification.

During the past decade, rural LECs in the western states have purchased hundreds of rural exchanges from the large price cap carriers. Many of these exchanges had been very low-priority operations for their prior owners, and were providing sub-standard service to their rural customers. The Commission's study area waiver files contain numerous examples of the acquisition and upgrade of long-neglected nearby rural exchanges by rural LECs. See e.g. Union Tel. Co. and US West Communications, Inc., 12 FCC Rcd 1840 (1997); Pend Oreille Tel. Co. and GTE Northwest, Inc., 12 FCC Rcd 63 (1997); and Accipiter Communications, Inc. and US West Communications, Inc., 11 FCC Rcd 14962 (1996). The Commission's study area waiver files also show that the promise and record of upgrades by rural LECs has resulted in vigorous support for these rural exchange acquisitions from state and local governments, local business communities, and local residents.

Notwithstanding the substantial public interest benefits of these transactions, the Commission has discouraged rural LEC acquisition of exchanges from larger carriers since 1994. The Commission first began conditioning its grant of study area waivers upon the consolidation of the pre-existing exchanges and the newly acquired exchanges of the rural LECs into a single study area. See GTE Southwest Incorporated and EagleNet, Inc., 9 FCC Rcd 1 008 (1994). Frequently, these forced study area consolidations resulted in penalization of rural LECs for acquiring and upgrading long-neglected nearby exchanges via substantial reductions in the federal high cost loop support that they previously had received for their pre-existing exchanges. See GTE Midwest Incorporated, Modern Telecommunications Company and Northeast Missouri Rural Telephone Company, 11 FCC Rcd 11553 (1996) (rural LEC that acquired and upgraded three nearby GTE exchanges had the high cost loop support for its eleven pre-existing rural exchanges reduced by over $250,000 per year). Next, the Commission began placing caps on the total high cost loop support to be received by the acquiring rural LEC not only for its newly acquired exchanges, but also for its pre-existing exchanges, during the next three or more years. See Accent Communications, Inc., 11 FCC Rcd 11513 (1996). While intended to limit Universal Service Fund outlays, these caps penalized rural LECs that upgraded either the plant of their pre-existing exchanges or their newly acquired exchanges. Finally, since May of 1997, Section 54.305 of the FCC's Rules has limited the high cost loop support available to rural LECs for newly acquired exchanges to the per-line support for which the exchanges were eligible prior to the transaction. This rule continues to penalize rural LECs that upgrade the plant and services of newly acquired exchanges. At the time that it adopted Section 54.305, the Commission stated that it was merely a transition mechanism for rural LECs, and that all exchanges (pre-existing and newly acquired) would be treated equally once the Commission implemented a revised federal universal service support mechanism (then presumed to be a forward-looking economic cost methodology) for rural carriers. Federal-State Joint Board on Universal Service, 12 FCC Rcd 8776, 8943 (1997).

The RTF Recommendation would provide additional universal service support to rural LECs that make meaningful new investments to enhance the infrastructure of, and improve the service in, newly acquired exchanges. The Western Alliance understands that such "meaningful investments" would include any additions or upgrades to the telecommunications plant of an acquired exchange that would permit it to furnish its rural customers with new or improved services that are included under the applicable Commission definition of "universal service."

The Western Alliance believes that caps on high cost loop support and/or safety valve support for acquired exchanges violate the requirement of sufficient and predictable universal service support, and should be rejected. It notes that the RTF plainly did **not** recommend that the cap on safety valve support be limited to five percent of the overall cap on high-cost loop support. Rather, the RTF employed the "five percent" figure merely as an illustration in the example of a safety valve mechanism included in Appendix D to its Recommendation.

However, to the extent that they are employed, all universal service caps should work in the same manner. That is, each cap should be computed separately, and when a cap is exceeded, the calculated pre-cap support due to each ETC subject to the cap should be reduced by the same percentage.

To date, rural LECs have not bought and sold rural exchanges for profit, and the Western Alliance does not expect such trading to commence at any point during the foreseeable future. Rather, all or virtually all of the rural exchanges acquired by rural LECs from U S West, GTE and Sprint during the past decade are still being operated by the acquiring rural LEC or its successor entity. However, if an acquired exchange receiving safety valve support is subsequently included in a sale of exchanges, the safety valve support should transfer with it, just like other universal service support.

The Western Alliance does not perceive any difference between the service needs of rural residents who live in exchanges that have long been served by a rural LEC, and the service needs of rural residents who live in exchanges that were acquired by rural LECs after some specified date (such as May 7, 1997 or July 1, 2001). Rather it believes that artificial distinctions between pre-existing and newly acquired exchanges discriminate unreasonably against the rural residents living in such exchanges, and should be terminated as soon as possible or at least minimized as much as possible.

In the spirit of compromise, the Western Alliance supports the RTF proposal for safety valve support for newly acquired exchanges. Compared with existing Rule 54.305 and the other FCC anti-acquisition measures during the past six years, the RTF proposal provides greater incentives for rural LECs to acquire and upgrade long-neglected nearby exchanges. The Western Alliance therefore supports it as an integral part of the entire RTF compromise package.

Per-Line Support Should Not
<u>Be Fixed In Competitive Study Areas</u>

The Western Alliance accepts, again in the spirit of compromise, the RTF Recommendation that per-line support be frozen in competitive areas as of the end of the quarter prior to competitive entry. The Western Alliance does not expect significant competition to arise in the sparsely populated, high-cost areas served by its members during the next five or so years. However, if such competition does arise, the freeze mechanism will adversely impact rural LECs and their customers.

First, the freeze mechanism fails to consider the normal two-year lag between the incurrence of universal service costs and the receipt of universal service support. If this lag continues to exist under the revised system, the freeze mechanism will deprive a rural LEC of federal universal service support that it would otherwise receive for bona fide investments and expenditures made during the two years prior to the entry of a competitor into its study area. This unexpected shortfall in revenues could significantly injure a small rural LEC, and impair its ability to provide service both in the portions of its service area subject to competition and in the portions thereof where no competition arises.

Second, the freeze mechanism disregards the possibility that increased per-line support may be necessary for infrastructure upgrades to meet universal service objectives in rural areas after the entry of competition. Whereas some assume that competition by itself will bring service improvements and rate decreases to Rural America without regard to universal service support, there is not yet sufficient evidence or experience to support this assumption. It remains quite likely that loop costs in some rural areas will continue to increase significantly above the national average even after the entry of competitors, and that additional per-line support will be necessary to enable both competitors to make the infrastructure upgrades necessary to furnish the requisite universal services.

Third, as evidenced by the recent Smith Bagley, Inc. petition to redefine the service areas of several rural LECs in Arizona (Public Notice (Smith Bagley, Inc. Petitions For Agreement To Redefine The Service Areas Of Navajo Communications Company, Citizens Communications Company Of The White Mountains, And Century Tel. Of The Southwest, Inc. On Tribal Lands Within The State Of Arizona), DA 01-409, released February 15, 2001), some competitors will not serve the entire study area of the rural LEC whose per-line support is to be frozen. In other instances, the competitor will "serve" the rural LEC's entire study area, but only by means of a thinly advertised "resale" offering intended to attract few or no customers in undesirable areas. The disaggregation mechanism available under the RTF Recommendation will not prevent the freezing of per-line support in partially competitive areas, for it is likely that many competitors will serve a portion (but not all) of the outer zone(s). Hence, it is likely that per-line support will be frozen in substantial portions of a "competitive" rural LEC study area that the competitor will never actually serve.

In the spirit of compromise, the Western Alliance supports the RTF proposal that per-line support be frozen in competitive areas as of the end of the quarter prior to competitive entry. However, the Western Alliance supports this proposal only as an integral part of the entire RTF compromise package and only if the entire RTF proposal is adopted without change.

Any Cap Placed On High Cost Loop Support Must Be Reasonable

The Western Alliance supports the RTF Recommendation that the High Cost Loop Fund be re-based and that a new cap factor be applied on a going-forward basis. Once again, the Western Alliance would prefer that the RTF proposal eliminate the indexed cap on the High Cost Loop Fund in its entirety. However, in the spirit of maintaining the RTF consensus, the Western Alliance will support the RTF proposal for a modified cap so long as the entire Recommendation is adopted without substantial modification.

The Western Alliance has long opposed the "temporary" indexed cap on the High Cost Loop Fund that was adopted by the FCC in 1993. Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, 9 FCC Rcd 303 (1993). Among other things, the Western Alliance believes that any cap violates the statutory requirement in Sections 254(b)(5) and 254(e) of the Communications Act that universal service support be "sufficient." Since 1997, the current indexed cap has been reducing the federal high cost loop support received by rural LECs by a steadily increasing portion of the amount deemed "sufficient" under the existing universal service rules and formulas. These shortfalls are placing greater and greater strains upon the operating and investment capabilities of rural LECs.

In the present environment, any significant relief from the current "interim" cap is welcome. The RTF proposal for re-basing the cap to encompass only rural LECs, and to reflect Year 2000 support and corporate operations expense, will improve the predictability and sufficiency of the federal high cost loop support mechanism during the period that it remains in effect. Likewise, the RTF's proposed "Rural Growth Factor" is a more accurate, reasonable and equitable indexing factor for rural telephone company service than the index employed by the current "interim" cap.

The Western Alliance supports the RTF proposal for above-the-cap safety net additive support for rural carriers having over 14 percent growth in telecommunications plant in service

(TPIS). This is a reasonable and appropriate adjustment to alleviate the most severe impacts of the modified cap on rural LECs that have invested in good faith to furnish universal services to their rural customers.

The safety net additive mechanism will not enable rural LECs to recover more than 100 percent reimbursement on their incremental loop investment. For example, assume that the proposed cap on the modified High Cost Loop Fund was triggered for 2003. Assume further that ILEC A met the 14% TPIS growth criterion, that ILEC A would have received High Cost Loop Fund support in the amount of $1,500,000 if the cap had not been triggered (uncapped amount), and that ILEC A would receive $1,400,000 under the cap (capped expense adjustment). The application of the safety net additive mechanism means that ILEC A would receive 50 percent of the difference between the $1,400,000 capped expense adjustment and the $1,500,000 uncapped amount. This additional $50,000 "safety net additive" would be paid to ILEC A in addition to its capped $1,400,000 High Cost Loop Fund support for the year, for a total of $1,450,000 in support. Because the total payment is always less than the federal High Cost Loop Fund support that would have been paid in the absence of a cap, it will never exceed 100 percent reimbursement on a rural carrier's incremental loop investment.

Future Study Should Not Undermine The Certainty And Stability Of The RTF Recommendation

At paragraph 21 of its Recommended Decision, the Joint Board urged the Commission to refer to it, no later than January 1, 2002, a proceeding to consider the implementation of an appropriate federal high-cost loop support mechanism for rural carriers after the expiration of the RTF plan.

The Western Alliance understands that the RTF Recommendation is proposed for a term of five years, presumably from July 1, 2001 to June 30, 2006. However, one of the primary aspects of the

RTF Plan is that it brings increased certainty during the five-year period to the federal universal service support mechanism and revenues relied upon by rural LECs. As noted above, the Commission's 1995 inquiry into the former Universal Service Fund (CC Docket No.80-286) and the various proceedings implementing the Telecommunications Act of 1996 (particularly, the present CC Docket No.96-45) have resulted in a six-year period of uncertainty regarding these critical programs. This uncertainty has constrained, and in some cases significantly reduced, the incentives and capabilities of rural LECs to invest in infrastructure upgrades and service improvements.

It would be unfortunate if the increased certainty and stability achieved by adoption of the RTF Recommendation were undermined six months after its implementation by a new proceeding intended to replace it before anyone can reasonably determine whether and how well it is working. It would appear to be much better public policy to implement the RTF proposals, and to monitor their impact upon universal service, competition and consumer welfare for a reasonable period of at least 24 to 30 months before initiating a proceeding looking toward their replacement. After all, it is conceivable that the RTF proposals will work so well that the Commission and Joint Board will want to retain them in place, with minimal adjustments, for a period much longer than their initial five-year term.

Conclusion

The Western Alliance supports the RTF's Recommendation in its entirety, and requests that the Commission adopt it without changes and implement it on July 1, 2001. Although the Western Alliance would prefer no cap or competitive freeze on high cost loop support and no limits on universal service support for newly acquired and upgraded exchanges, it recognizes that the Recommendation is a compromise package. More important, it is a compromise package that has been fashioned by, and received the consensus support of, a broad cross-section of industry representatives. The Western Alliance believes that this compromise is fair and equitable to all government entities, carriers and consumers affected by it, and that it will preserve and advance universal service in the areas served by rural telephone companies. Therefore, the Western Alliance asks the Commission to adopt the Recommendation in its entirety as soon as possible.

Respectfully submitted,
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Dated: February 26, 2001

CERTIFICATE OF SERVICE

I, Douglas W. Everette, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and that a copy of the foregoing **Comments of the Western Alliance** concerning the Recommenced Decision of the Rural Task Force to be served by first class mail or hand delivery this 26th day of February, 2001, to the persons listed below.

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